THE Pundit

Michigan Child Support Information

In 2002, Michigan had 59.4 percent for collections on current support. The national average for collections on current support that year was 57.5 percent.

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Court Rule Mediation in Kent County

by Julie Haveman, Kent County Friend of the Court

When the domestic-relations mediation court rule (MCR 3.216) was amended significantly in 2000, Kent County was fortunate to have a court administrator Mr. Kim Foster who saw the rule's potential. He organized a committee to develop a plan for implementing the rule locally. The committee's members included judges, attorneys, mediators, court personnel, and mental-health professionals. Those volunteers donated their time – lots of time. A standing Alternative Dispute Resolution (ADR) oversight committee will continue to monitor our experience with the rule and recommend changes in our local plan.

MCR 3.216 requires that court-rule mediators have considerable training and experience. The friend of the court (FOC) office already had some mediators who were experienced in "statutory mediation" of custody and parenting-time disputes. Prospective new court-rule mediators trained by observing those FOC mediators or "co-mediating" cases handled by them. Most of the newcomers voluntarily continued the hands-on training even after they had met the court rule's minimum requirements.

During the implementation period, our judges made a special effort to ask at an early stage whether a case was appropriate for mediation. If so, the judge issued an order of referral from the bench. The parties then could select their own mediator from an approved list, or the Court would randomly assign from the list. If the parties could not afford to pay for mediation, they received the service for free by participating in the mediator training program. Judges, attorneys, and everyone else involved gained a better understanding of mediation's value in domestic relations litigation. The lessons learned have shaped our permanent ADR plan.

What We Have Learned

Our cooperative initial effort benefited everyone, including the veteran FOC mediators, who got better acquainted with the attorneys and mental-health professionals who served mediation internships. The relationships established then will pay dividends later.

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Factors Contributing to Increases in the Domestic Relations Caseload and Number of Poverty Level Families

by State Court Administrative Office, Friend of the Court Bureau Staff

Rising divorce and non-material birth rates suggest that the proportion of children living in a household without two parents will increase further. The following information was gathered by the State Court Administrative Office Friend of the Court Bureau:

Changes in Michigan's Population 1970 and 2000 (Source: Michigan Department of Community Health and United States Census Bureau)

- The population in Michigan in 1970 was 8,889,000. In 2000, the population for the state of Michigan was 9,956, 000. This represents an increase in the state's population of **12 percent**.

Marriage Licenses/Divorces (Source: Michigan Department of Community Health)

- In 1970, there were 91,933 marriage licenses issued. In 2000, there were 66,932 marriage licenses issued. This represents a decrease of **27 percent** despite an increase in Michigan's population.

- In 1970, there were 29,934 divorces. In 2000, there were 38,932 divorces. This represents an increase of **30 percent.** NOTE: As the number of marriage licenses decreased by almost 30 percent the number of divorces rose by almost 30 percent.

Non-material Births and Female Heads of Households (Source Michigan Department of Community Health and United States Census Bureau)

- In 1970, there were 18,712 births to unwed parents. In 2000, there were 46,107. This represents an increase of **146 percent**.

- In 1970, there were 216,339 female heads of households in Michigan. In 2000, there were 473,802. This represents an increase of **119 percent**.

Michigan Families Living in Poverty 1970 and 2000 (Source: United States Census Bureau)

- In 1970, there were 160,038 families living below the poverty level. In 2000, there were 192,376, a **20 percent** increase.

- In 1970, there were 62,299 families with a female head of household living below the poverty level. In 2000, there were 110,549, an increase of **77 percent**.

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Cases in Brief

by State Court Administrative Office, Friend of the Court Bureau Staff

[Toni Marie] Vodvarka v *[Ronald Lee] Grasmeyer,* Mich App 248058 (2003)

Under the Child Custody Act, MCL 722.1 et seq., a party petitioning the court to consider a change in custody must show "proper cause" or a change in circumstances. This case defines those standards. In addition, the Court of Appeals recognized that, while such cases are rare, 'proper cause" to review custody can exist even though the circumstances have not changed since the most recent custody order.

Grasmeyer case defines standards for "proper cause" or change in circumstances for change in custody.

Genetic testing confirmed that a single instance of sexual intercourse between the plaintiff mother and the defendant produced a child. The defendant signed a "Paternity Acknowledgment." The prosecutor (plaintiff was represented by the prosecutor as she was receiving state assistance) submitted a proposed order to the court which granted custody to the plaintiff and ordered the defendant to pay for support and expenses. The order was signed only by the prosecutor and entered by the court without a hearing.

On that same day, the defendant filed a petition for custody. He cited the fact that, in contrast to the plaintiff, he was employed; that the plaintiff had been harassing and assaulting him; that the plaintiff had engaged in similar behavior in the past which had resulted in her losing custody of two other children; that plaintiff was preventing defendant from seeing the child; and that there was not yet an established a custodial environment with the plaintiff due to the child's young age (four months).

The plaintiff filed a motion to dismiss, citing MCL 722.27(1)(c) which provides the court may:

> Modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age and, subject to section 5b of the Support and Parenting Time Enforcement Act, 1982 PA 295, MCL 552.605b, until the child reaches 19 years and 6 months of age. The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

Because the prosecutor's custody order was entered by the prosecutor on the same date that the petition for custody was filed by the defendant, no "change in circumstances" occurred between those two procedural events. In granting the plaintiff's motion to dismiss, the trial court ruled that the defendant had not shown either a "change in circumstances" or "proper cause." The defendant appealed.

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Court Rule Mediation in Kent County, *Continued from page 1*

The education was not a one-way process. Since statutory mediation is limited to custody and parenting-time issues, the experienced FOC mediators who helped train the new court-rule mediators learned about psychology, property law, and other non-child issues that must be resolved during the typical case. And it was interesting to watch some of the new attorney-mediators adapt to their changed role, wanting to offer legal advice, but knowing that they should not.

"More issues will be resolved amicably if court-rule mediation is offered early in the proceedings."

In court-rule mediation, child support is discussed after the custody and parenting time issues have been settled. In our experience, most couples in mediation want information about the child-support formula, but they often agree on a different support amount, some lower, but even more higher. Our mediators emphasize budgeting and meeting the children's needs. Comparatively few mediated child-support arrangements require any later enforcement action by the FOC.

More issues will be resolved amicably if court-rule mediation is offered early in the proceedings. Late-stage mediation can be productive, but mediation is more difficult after the parties have been further "wounded" in litigation. Early mediation also helps the parties feel in control of their lives and eases demands on the court's time.

When it comes to parenting time, mediating parties usually prefer a flexible schedule. Mediators inform them that a strict schedule or additional mediation is possible if the initial arrangement does not work. The mediation process fosters a cooperative spirit that the parties usually seek to preserve.

Ironically, many parties who are referred for court-rule mediation find it odd that the FOC is involved in such a positive process. Most have "heard about" the FOC. Offering mediation via referral from the court enhances the images of both the FOC and the court. Most parties who participated in court-rule mediation expressed gratitude that the service had been offered to them. It usually is a positive experience for them.

Factors that Influence Caseload, *Continued from page 2*

Will these trends continue? Yes according to the Federal Office of Child Support Enforcement (FOSCE). "The child support population in the United States is projected to reach 72 million by 2009, a 15 percent increase over the 1998 estimate of 62 million. By 2009, the child support population will include 17 million custodial parents, almost 3 million non-parent custodians, 22 million non-custodial parents, and over 30 million children eligible for support."

Why is tracking this demographic information important? It will help the courts to meet the needs of the population they serve. More families will need judicial services to secure consistent child support payments and also assistance with establishing and maintaining contact with their children (parenting time). Ensuring that parents nurture their children will require a strong and competent court system.

Capitol Corner

by State Court Administrative Office, Friend of the Court Bureau Staff

Since the October of 2003 Pundit 16 House and Senate bills that could impact friends of the court have been introduced. These and other bills may be viewed at: http://www.michiganlegislature.org/.

House Bill 5142 was introduced on October 7, 2003, and referred to House Judiciary Committee. The bill would amend the Child Custody Act by establishing a rebuttable presumption that a parent's actions and decisions regarding grandparenting time are in the child's best interest. If the court orders grandparenting time, the court would be required to state on the record why the parent's decisions were not in the child's best interests.

House Bill 5169 was introduced on October 14, 2003 and referred to the House Judiciary Committee. The bill would amend the Child Custody Act by allowing a sibling of a child to commence an action for sibling visitation. The bill would amend the Act by also establishing a rebuttable presumption that a parent's actions and decisions regarding sibling visitation are in the child's best interest. If the court orders sibling visitation, the court would be required to state on the record why the parent's decisions to deny sibling visitation were not in the child's best interests.

House Bill 5259 and House Bill 5261 were introduced on November 5, 2003. Both were referred to the House Committee on Family and Children Services. House Bill 5259 would amend the Friend of the Court Act and HB 5261 would amend the Support and Parenting Time Enforcement Act. The bills call for the Office of Child Support to comply with the child support amnesty program (which would be established under tie-barred HB 4654). A payer would not be available for the amnesty program if prosecution for failure to pay child support had already been initiated before the payer applied to enter the program. As noted these two bills are tie-barred to House Bill 4654.

House Bill 5262 was introduced on November 5, 2003, and referred to the House Committee on Family and Children Services. The bill would amend the Penal Code by establishing that a child support payer who participates in the child support amnesty program could not be prosecuted for failure to pay child support. Under the bill, the payer would not be eligible to participate in the program if a prosecution had already been initiated. This bill is tie-barred to HB 4654.

House Bill 5368 was introduced on December 11, 2003, and referred to the House Judiciary Committee. The bill would amend the Office of Child Support Act by requiring each Office of Child Support (OCS) to submit to the Attorney General a list of child support payers who owe more than $200,000 in past due child support. The list would include the amount owed and the payer's address if known. Once the Attorney General receives the list he could:

- Post the OCS list on the internet.
- Distribute a most wanted list that includes names and photographs. The list could be posted on the internet and in public places.

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Cases in Brief, *Continued from page 3*

The Court of Appeals considered two issues.

(1) Was the trial court limited to considering only those events that occurred between the entry of the most recent custody order and the filing of the defendant's motion for custody?

(2) Did the defendant fail to establish "proper cause" sufficient to review the custody order?

In reaching its decision, the court of appeals developed an objective test for courts to apply in determining what constitutes a "change of circumstances" or "proper cause."

To show "the circumstances," a moving party must prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a significant impact on the child's well-being, have "materially changed." The changes must go beyond normal changes that happen in a person's life and they must impact the child.

The court said a change of circumstances must have changed after entry of the most recent order. For that reason, the defendant in this case could not rely on circumstances that existed prior to entry of the prosecutor's custody order.

The court defined **"proper cause to revisit the custody order"** as "one or more appropriate grounds that have or could have a significant impact on the child's life such that a reevaluation of the child's custodial situation should be undertaken." The "appropriate grounds" can be culled from the 12 factors considered in determining which custodial situation is in the child's best interests but they must be legally sufficient or of such magnitude as to have a significant impact on the child's well-being to be proper cause to revisit the custody order. The determination must be made on a case-by-case basis. The person filing the motion must prevail by a preponderance of the evidence. "Proper cause" does not always involve change of circumstances; rather, this test measures the significance of facts or events.

In most cases, it is difficult to prove proper cause when it is clear that there has been no change in circumstances, however, the Court of Appeals said that this case was the exception. Due to short interval between the paternity finding and the entry of the prosecutor's custody order, the defendant never had an opportunity prior to entry of that order to make the Court aware of the existing circumstances. In these unusual circumstances, the defendant's motion did show 'proper cause" to review the statutory best interests factors as they applied to this case. The Court reversed the trial court's decision dismissing the defendant's motion. It remanded the case for hearing on the merits of the custody issues.

Capitol Corner, *Continued from page 5*

House Bill 5369 was introduced on December 11, 2003, and referred to House Judiciary Committee. The bill would amend the Penal Code by defining criminal nonsupport and the penalties for that crime.

- **Child support payers with an arrearage of $20,000 or more** could be imprisoned for not more than 10 years and/or fined of not more than $15,000, or three times the unpaid support whichever is greater. The same penalties could be imposed if the child support payer fails to pay support as ordered by the court for more than five years. The same penalties could be imposed on a child support payer with an arrearage of $1,000 or more but less than $20,000 if the payer has two or more prior convictions (as described in the bill).

- **Child support payers with an arrearage of $1,000 but less than $20,000** could be imprisoned for 5 years, and/or be fined not more $10,000 or three times the unpaid child support, whichever is greater or both. The same penalties could apply to a child support payer who fails to pay support as ordered by the court for more than three years or who has a child support arrearage of less than $1,000 but also has one or more prior convictions (as described in the bill).

- **Child support payers with an arrearage of less than $1,000** could be imprisoned for not more than 1 year and/or be fined not more than $2,000 or three times the unpaid support, whichever is greater. The same penalties could be imposed if the child support payer has failed to pay support as ordered by the court for more than 90 days.

  NOTE: The bill requires the prosecuting attorney to list the payer's prior convictions. The validity of the prior convictions would be determined by the court (not a jury) at sentencing or at a separate hearing held for that purpose before sentencing. **House Bill 5370** would amend the Code of Criminal Procedure by revising the sentencing guidelines to be consistent with the penalties for criminal nonsupport under House Bill 5369.

House Bill 5371 was introduced on December 11, 2003, and referred to House Judiciary Committee. The bill would amend the Friend of the Court Act to provide that, if a parent who is incarcerated for a maximum of five years files a petition for a modification of child support, the child support formula shall not reduce the support payment by more than 50 percent. If the parent is to serve a minimum of five years and maximum of 10 years the formula shall not reduce the support payment by more than 25 percent.

House Bill 5372 was introduced on December 11, 2003, and referred to the House Committee Judiciary. The bill would amend the Support and Parenting Time Enforcement Act by requiring that child support payers arrested on a felony non-support warrant must remain in custody until the preliminary examination unless they deposit a cash performance bond.

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FYI

by State Court Administrative Office, Friend of the Court Bureau Staff

Verifying Individuals Who are Incarcerated

Many times friend of the court employees must verify if individuals are incarcerated. It is often difficult to verify if an individual is incarcerated in a state prison outside the state of Michigan. The following website may be helpful when attempting to verify if an individual is incarcerated in a prison not in Michigan: http://www.prisonsandjails.com/cjlinks/state/state.htm.

Reports Due

- **SCAO-41 Forms Now Due March 15, 2004:** The State Court Administrative Office has extended the deadline to submit the SCAO-41 Form (the friend of the court statistical report) to March 15, 2004.

- **2003 Grievance Reports Due January 15, 2004**: Each friend of the court office was to submit its biannual grievance report for July-December 2003 by January 15, 2004, to the State Court Administrative Office. If this has not been completed, please forward the report electronically to Timothy Cole at colet@courts.mi.gov. as soon as possible.

- **The 2004 Access and Visitation 1st Quarterly Budget and 1st Quarterly Surveys** were to be forwarded to the State Court Administrative Office Friend of the Court Bureau by January 15, 2004. If not already completed, please forward those budgets and surveys as soon as possible.

- **The Noncustodial Parent Workfirst 1st Quarterly Reports** were due January 15, 2004. If not already completed, please forward as soon as possible.

Administrative Memorandums for 2003 that Impact the Friends of the Court

Administrative Memorandum 2003-02: A new Michigan Court Rule on incarcerated parties — MCR 2.004 — went into effect January 1, 2003. The proposal for the rule came established a special procedures for ensuring prisoners receive notice of court proceedings involving their minor children. Administrative Memorandum 2003-02 can be found at: http://courts.michigan.gov/scao/resources/other/scaoadm/2003/2003-02.pdf.

Administrative Memorandum 2003-03: All friend of the court complaints are more properly addressed through the statutory grievance process which requires the friend of the court to investigate and answer grievances. Administrative Memorandum 2003-03 was issued to facilitate meaningful review and response to grievances. The memorandum can be found at: http://courts.michigan.gov/scao/resources/other/scaoadm/2003/2003-03.pdf.

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Administrative Memorandum 2003-04: Friend of the court offices transitioned to MiCSES 2.4. This memorandum provides policies and procedures for turning over the accounts and concluding friend of the court responsibilities for those accounts. Administrative Memorandum 2003-04 can be found at: http://courts.michigan.gov/scao/resources/other/scaoadm/2003/2003-04.pdf.

Administrative Memorandum 2003-07: Public Act 366 of 1996 created citizen advisory committees (CACs) to advise the county commissioners and the court concerning friend of the court matters. Administrative Memorandum 2003-07 reflects new federal requirements that direct states to limit access to records when family violence is indicated in a case, provides new direction on how records may be accessed, and contains tables of privileged communications and confidential agency records. Administrative Memorandum 2003-07 can be found at: http://courts.michigan.gov/scao/resources/other/scaoadm/2003/2003-07.pdf.

Administrative Memorandum 2003-08: Public Acts 70-79, 95-102, and 138 took effect October 1, 2003, and amended the laws affecting court filing fees, civil infraction assessments, minimum costs for misdemeanor and felony convictions, conditions of probation and parole, and priority of payment. Administrative Memorandum 2003-08 can be found at: http://courts.michigan.gov/scao/resources/other/scaoadm/2003/2003-08fees.pdf.

Administrative Memorandum 2003-11: State law makes failure to pay child support or abandonment of a spouse or child a felony. The memorandum provides a guide to friends of the court in the referral of child support payers for criminal prosecution. Administrative Memorandum 2003-11 can be found at: http://courts.michigan.gov/scao/resources/other/scaoadm/2003/2003-11.pdf.

Capitol Corner, *Continued from page 7*

House Bill 5373 was introduced on December 11, 2003, and referred to the House Judiciary Committee. The bill would amend the Michigan Penal Code to provide that, child support payers arrested for criminal nonsupport must remain in custody unless they deposit a cash bond of not less than $500.00 or 25 percent of the arrearage, whichever is greater. Unless the child support payer demonstrates good cause, the court would be required to continue the bond. The court could set the bond at an amount not more 100 percent of the arrearage plus court costs. The bond requirement would be entered into the Law Enforcement Information Network (L.E.I.N.). A civil warrant issued under the Support and Parenting Time Enforcement Act would be recalled if the payer has been arrested on a felony warrant.

Senate Bill 767 was introduced on October 9, 2003, and referred to the Senate Judiciary Committee. The bill would amend the Child Custody Act by specifying circumstances under which a grandparent may seek grandparenting time. The bill also establishes a rebuttable presumption that a parent's actions and decisions regarding grandparenting time are in the child's best interest. The court would be required to give the parent's position some special weight when making its decision. The bill requires the court to state on the record its reasons for granting or denying grandparenting time. The grandparenting time issue could be referred to the friend of the court for mediation.

Senate Bills 887, 888, 889, and 890 were introduced on December 10, 2003, and referred to the Senate Committee on Families and Human Services. The bills would amend the Support and Parenting Time Enforcement Act. Each bill addresses a different type of payment that a lien can be placed against.

- Senate Bill 887 provides for liens placed against the net proceeds from an insurance policy/contract.
- Senate Bill 888 provides for liens placed against the net proceeds from an inheritance.
- Senate Bill 889 provides for liens placed against the net proceeds of a workers disability award, a redemption, voluntary pay settlement, or advance payment.
- Senate Bill 890 provides for liens placed against the net proceeds from a litigation settlement negotiated before or after the filing of a lawsuit, or the entry of a civil judgment or arbitration award.

The lien would be perfected upon filing with the Office of Child Support. Before the net proceeds could be disbursed, certain requirements must be completed. One requirement is the attorney or designated individual (as provided in each bill) shall initiate a search of child support judgments, through the Office of Child Support, to determine if the beneficiary or claimant is a child support obligor or judgment debtor. The bill allows a fee of $10.00 for each name that is searched. If a child support judgment debtor is identified then arrangements are made to satisfy the child support judgment. The bills define net proceeds any amount of money in excess of $2,000 payable attorney fees or other required costs are deducted.